

TITLE 3. DEPARTMENT OF PESTICIDE REGULATION
Enforcement Response
DPR Regulation No. 11-001

NOTICE OF PROPOSED REGULATORY ACTION

The Department of Pesticide Regulation (DPR) proposes to amend sections 6128 and 6130, and amend and renumber section 6130(b) to section 6131 of Title 3, California Code of Regulations. The proposed regulatory action would revise appropriate enforcement responses to be taken by the county agricultural commissioner (CAC) each time a violation(s) occurs to improve effectiveness and clarity of the regulations.

SUBMITTAL OF COMMENTS

Any interested person may present comments in writing about the proposed action to the agency contact person named below. Written comments must be received no later than 5:00 p.m. on February 28, 2011. Comments regarding this proposed action may also be transmitted via e-mail <dpr11001@cdpr.ca.gov> or by facsimile transmission at (916) 324-1452.

A public hearing is not scheduled. However, one will be scheduled if any interested person submits a written request to DPR no later than 15 days prior to the close of the written comment period.¹

EFFECT ON SMALL BUSINESS

DPR has determined that the proposed regulatory action has no impact on small businesses that operate lawfully. There will be some impact to those businesses that are found in violation of certain California pesticide laws and regulations.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

DPR protects human health and the environment by regulating pesticide sales and use and by fostering reduced-risk pest management. DPR's strict oversight begins with product evaluation and registration; and continues through statewide licensing of commercial and private applicators, pest control businesses, and consultants; environmental monitoring; and residue testing of fresh produce. This statutory scheme is set forth primarily in Divisions 6 and 7 of the Food and Agricultural Code (FAC). CACs have joint authority with DPR in enforcing pesticide laws and regulations. Field enforcement on a local level is carried out by the CACs, under the supervision of DPR. The goal of the enforcement programs is to protect public health, property, pesticide handlers and fieldworkers, and environment of the State of California.

Consistent statewide enforcement of California's environmental laws is paramount for the protection of California's people, property, and the environment. In 2006, DPR adopted

¹ If you have special accommodation or language needs, please include this in your request for a public hearing. TTY/TDD speech-to-speech users may dial 7-1-1 for the California Relay Service.

enforcement response regulations (ERR) to strengthen environmental enforcement and improve statewide consistency of enforcement responses used by CACs when acting upon pesticide violations. By creating a violation classification system and enforcement response procedure, CACs throughout California are able to follow the same guidelines.

The primary goal of ERR is to ensure that California's robust pesticide laws and regulations are enforced in a uniform manner by the 55 CACs. Although the CAC is necessarily sensitive and responsive to the environmental, pest control, and business needs of their county, they enforce pesticide regulations within the legal and policy framework of the statewide DPR program. DPR works to ensure a uniform implementation through its coordination activities.

It must be a goal of any enforcement program to foster a sense of fairness in all participants. CACs conduct 15,000 to 18,000 pesticide inspections annually, leading to most enforcement actions. A smaller portion of enforcement actions are based on investigation of pesticide exposure-related illness episodes and investigations of other complaints. Belief in the fairness of the enforcement program is critical to the accuracy of the inspection and acceptance of the outcome. Under this principle, everyone involved in the regulatory process, including administrators and inspectors, as well as the regulated public, need to accept the fundamental fairness of the rules being enforced and the outcome for violators.

The proposed revisions will improve effectiveness and clarity of the regulations, and also help CACs prioritize their efforts toward the violations most likely to cause harm to people and the environment. They, like most public agencies, are increasingly required to accomplish more with reduced staff and stresses on funding. Enforcement actions require careful assembly of case evidence and preparation for hearings and appeals, making them a relatively resource-consuming part of the CACs' pesticide program.

Proposed section 6128 would:

- Allow the CAC to comply with provisions of this section as a related group of violations. All documents relating to a single incident can be aggregated to support a stronger enforcement action.
- Add the definition of "incident" and clarify the definition of "decision report."
- Require CACs to respond with an enforcement action for each incident instead of each violation and amend the enforcement response structure designed to be used based on class violations specified in section 6130.
- Extend the time for CACs to submit a decision report to the Director from 30 to 60 days.
- Exclude "cases of intentional ingestion" from the requirement of CACs providing the opportunity to the District Attorney, City Attorney, or Circuit Prosecutor to participate in a priority investigation.

Proposed section 6130 would:

- Revise and provide clear criteria for violations that are in Class A, B, or C, and clarify that CACs are responsible for designating the violation class.

- Provide fine setting criteria to include broad respondent compliance history and severity of effects.
- Require CACs to send a copy of the proposed action, as well as the final action, to the Director.

Proposed section 6131 would:

- Further clarify the requirements for CACs to use when taking an enforcement action against a licensed or certificated employee who failed to use personal protective equipment or other safety equipment required by section 6702(c).

IMPACT ON LOCAL AGENCIES OR SCHOOL DISTRICTS

DPR has determined that the proposed regulatory action does not impose a mandate on local agencies or school districts, nor does it require reimbursement by the State pursuant to Part 7 (commencing with section 17500) of Division 4 of the Government Code because the regulatory action does not constitute a "new program or higher level of service of an existing program" within the meaning of section 6 of Article XIII of the California Constitution. DPR has also determined that no nondiscretionary costs or savings to local agencies or school districts will result from the proposed regulatory action.

COSTS OR SAVINGS TO STATE AGENCIES

DPR has determined that no savings or increased costs to any state agency will result from the proposed regulatory action.

EFFECT ON FEDERAL FUNDING TO THE STATE

DPR has determined that no costs or savings in federal funding to the state will result from the proposed action.

EFFECT ON HOUSING COSTS

DPR has made an initial determination that the proposed action will have no effect on housing costs.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESSES

DPR has made an initial determination that adoption of this regulation will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

DPR has made an initial determination that the adoption of this regulation will not have a

significant cost impact on representative private persons or businesses. The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. The proposed regulatory action will have no impact on lawful operations of pesticide users, advisers, or dealers. Fines are incurred only for violations of the FAC and Title 3, California Code of Regulations.

IMPACT ON THE CREATION, ELIMINATION, OR EXPANSION OF JOBS/BUSINESSES

DPR has determined it is unlikely the proposed regulatory action will impact the creation or elimination of jobs, the creation of new businesses or the elimination of existing businesses, or the expansion of businesses currently doing business with the State of California.

CONSIDERATION OF ALTERNATIVES

DPR must determine that no reasonable alternative considered by the agency, or that has otherwise been identified and brought to the attention of the agency, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons or businesses than the proposed regulatory action.

AUTHORITY

This regulatory action is taken pursuant to the authority vested by FAC sections 2281, 11456, 12781, 12976, and 15203, and Business and Professions Code section 8617.

REFERENCE

This regulatory action is to implement, interpret, or make specific FAC sections 11892, 12973, 12996, 12997, 12999.5, and 15202, and Business and Professions Code section 8617.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

DPR has prepared an Initial Statement of Reasons, and has available the express terms of the proposed action, all of the information upon which the proposal is based, and a rulemaking file. A copy of the Initial Statement of Reasons and the proposed text of the regulation may be obtained from the agency contact person named in this notice. The information upon which DPR relied in preparing this proposal and the rulemaking file are available for review at the address specified below.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After the close of the comment period, DPR may make the regulation permanent if it remains substantially the same as described in the Informative Digest. If DPR does make substantial changes to the regulation, the modified text will be made available for at least 15 days prior to

adoption. Requests for the modified text should be addressed to the agency contact person named in this notice. DPR will accept written comments on any changes for 15 days after the modified text is made available.

AGENCY CONTACT

Written comments about the proposed regulatory action; requests for a copy of the Initial Statement of Reasons, the proposed text of the regulation, and a public hearing; and inquiries regarding the rulemaking file may be directed to:

Linda Irokawa-Otani, Regulations Coordinator
Office of Legislation and Policy
Department of Pesticide Regulation
1001 I Street, P.O. Box 4015
Sacramento, California 95812-4015
(916) 445-3991

Note: In the event the contact person is unavailable, questions on the substance of the proposed regulatory action may be directed to the following person at the same address as noted above:

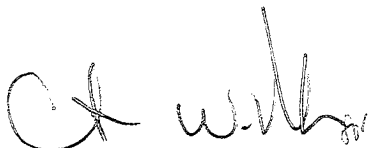
Cliff Smith, Senior Environmental Scientist
Enforcement Branch
(916) 324-6680

This Notice of Proposed Action, the Initial Statement of Reasons, and the proposed text of the regulation are also available on DPR's Internet Home Page <<http://www.cdpr.ca.gov>>. Upon request, the proposed text can be made available in an alternate form as a disability-related accommodation.

AVAILABILITY OF FINAL STATEMENT OF REASONS

Following its preparation, a copy of the Final Statement of Reasons mandated by Government Code section 11346.9(a) may be obtained from the contact person named above. In addition, the Final Statement of Reasons will be posted on DPR's Internet Home Page and accessed at <<http://www.cdpr.ca.gov>>.

DEPARTMENT OF PESTICIDE REGULATION



Director

12-30-10

Date

